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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

craigslist, Inc., a Delaware corporation,

Plaintiff,

v.

John Doe d/b/a cladgenius.com; John Doe
d/b/a caposter.net; John Doe d/b/a
pvagenius.com; and Does 4 through 25,
inclusive,

Defendants.

Case No.

**PLAINTIFF CRAIGSLIST, INC.'S FIRST
AMENDED COMPLAINT FOR:
(1) COPYRIGHT INFRINGEMENT,
17 U.S.C. § 101, et seq.; (2) VIOLATION OF
THE DIGITAL MILLENNIUM
COPYRIGHT ACT, 17 U.S.C. § 1201;
(3) VIOLATION OF THE COMPUTER
FRAUD AND ABUSE ACT, 18 U.S.C.
§1030; (4) VIOLATION OF CALIFORNIA
PENAL CODE § 502; (5) BREACH OF
CONTRACT; (6) INDUCING BREACH OF
CONTRACT; (7) INTENTIONAL
INTERFERENCE WITH CONTRACTUAL
RELATIONS; AND (8) FRAUD.**

DEMAND FOR JURY TRIAL.

I. INTRODUCTION

1. craigslist operates the website, www.craigslist.org, which provides online localized classified ad placements and related online services in 700 cities in 70 countries worldwide. craigslist is one of the most visited websites in the world with more than 50 million Americans alone visiting the craigslist website each month generating more than 20 billion page views, and posting more than 40 million free classified ads. The smooth operation and functional usability of the website is vital to craigslist and to the millions of people who rely on its services each and every day. Unfortunately, craigslist is required to expend significant resources in combating abuse by individuals who wish to profit by flooding craigslist with illegitimate advertisements and by otherwise conducting prohibited activities at the expense of craigslist and legitimate craigslist users.

2. Defendants are engaged in intentional for-profit abuse of craigslist that threatens the very operation of the services and communities that craigslist has built. Defendants develop, offer, market and distribute illegal tools and services designed to greatly facilitate and amplify unauthorized and illegal uses of craigslist's classified services – at the expense of craigslist and legitimate craigslist users.

3. Defendant's ongoing activities burden craigslist's systems and services and detract from craigslist's free local online marketplace communities as well as craigslist's reputation and goodwill.

4. craigslist brings this action to protect its services and the communities that rely on its services from being injured by self-interested profiteers undermining and debasing craigslist's services in the pursuit of ill-gotten gains.

II. JURISDICTION

5. The Court has jurisdiction over this action pursuant to:

a. 28 U.S.C. §§ 1331 and 1338, because this action alleges violations of federal statutes, including 17 U.S.C. § 101, *et seq.*, 17 U.S.C. § 1201, and 18 U.S.C. § 1030;

b. Additionally or alternatively, 28 U.S.C. § 1332, because there may be complete diversity of citizenship between the parties which will be determined when all

1 defendants are identified, and because the matter in controversy exceeds the sum or value of
2 \$75,000, exclusive of interest and costs; and

3 c. 28 U.S.C. § 1367 (supplemental jurisdiction), because the claims alleged
4 under state law are so related to claims in this action over which this Court has original
5 jurisdiction that they form part of the same case and controversy under Article III of the United
6 States Constitution.

7 **III. VENUE**

8 6. Venue is proper in this District under 28 U.S.C. § 1391, because a substantial part
9 of the events or omissions giving rise to the claims occurred in this District, Defendants accessed
10 and used craigslist's computers and services to transact their affairs, craigslist is located in this
11 District, and a substantial part of craigslist's property, which was targeted and damaged by
12 Defendants' acts, is situated in this District.

13 7. In addition, the Terms of Use ("TOU") governing Defendants' access to and use of
14 the craigslist website and craigslist's services provide that courts located within the county of San
15 Francisco, California, shall have exclusive jurisdiction over the relationship between craigslist
16 and Defendants.

17 8. Intradistrict Assignment is proper in the San Francisco Division of this Court
18 pursuant to Civil Local Rules 3-5(b) and 3-2(c) for the reasons stated above.

19 **IV. THE PARTIES**

20 9. craigslist, Inc. is a Delaware corporation, with its principal place of business in
21 San Francisco, California.

22 10. craigslist is informed and believes, and on that basis alleges, that John Doe d/b/a
23 cladgenius.com is a person or entity responsible in whole or in part for the wrongdoing alleged
24 herein. craigslist will amend this Complaint when the identities of such persons or entities
25 and/or the scope of their actions become known.

26 11. craigslist is informed and believes, and on that basis alleges, that John Doe d/b/a
27 caposter.net is a person or entity responsible in whole or in part for the wrongdoing alleged
28

1 herein. craigslist will amend this Complaint when the identities of such persons or entities
2 and/or the scope of their actions become known.

3 12. craigslist is informed and believes, and on that basis alleges, that John Doe d/b/a
4 pvagenius.com is a person or entity responsible in whole or in part for the wrongdoing alleged
5 herein. craigslist will amend this Complaint when the identities of such persons or entities and/or
6 the scope of their actions become known.

7 13. Does 4-25 are persons or entities responsible in whole or in part for the
8 wrongdoing alleged herein. craigslist is informed and believes, and based thereon, alleges that
9 each of the Doe Defendants participated in, ratified, endorsed, or was otherwise involved in the
10 acts complained of, and that they have liability for such acts. craigslist will amend this Complaint
11 if and when the identities of such persons or entities and/or the scope of their actions become
12 known.

13 14. Defendants John Doe d/b/a cladgenius.com, John Doe d/b/a caposter.net, John Doe
14 d/b/a pvagenius.com, and Does 4 through 25 are referred to collectively in this Complaint as
15 "Defendants."

16
17 **V. FACTS GIVING RISE TO ALL CLAIMS FOR RELIEF**

18 **A. CRAIGSLIST BACKGROUND**

19 15. craigslist was founded in San Francisco, California, in 1995. It originated from an
20 email list by Craig Newmark to share information with friends and acquaintances about events in
21 and around the San Francisco Bay Area. Thereafter, it quickly gained in popularity and scope as
22 an online forum for free local classified ads.

23 16. craigslist incorporated in 1999.

24 17. craigslist maintains its headquarters in San Francisco, California, and the majority
25 of servers on which the craigslist services operate are located in San Francisco.

26 18. The greater Bay Area, and specifically San Francisco, remains one of the largest
27 communities of craigslist users.
28

1 19. Today, the craigslist website – www.craigslist.org – is world renowned. It
2 provides its free localized online classified ad services and forums in 700 cities in 70 countries
3 worldwide, and is one of the most visited websites in the world. Each month more than 50
4 million Americans visit the craigslist website generating more than 20 billion page views, and
5 posting more than 40 million free classified ads.

6 **B. CRAIGSLIST'S WEBSITE AND CLASSIFIED AD SERVICES**

7 20. craigslist enables and allows users to review or post online local classified
8 advertisements for various categories of products and services on the craigslist website.

9 21. The website is organized first by geographic area, and then by category of product
10 or service within a geographic area. This organizational system ensures that craigslist remains a
11 *localized* service so buyers know they will find products and services available in their
12 communities. It also ensures that craigslist remains an *efficient* service so buyers' searches for
13 particular types of products and services are not littered with irrelevant postings.

14 22. The categories within each geographic area (for example, jobs, personals, housing,
15 furniture, cars, clothes, and vehicles) are displayed on discrete webpages as lists of posted ads.

16 23. An ad appears in a category list identified by a descriptive title created by the user
17 who posted the ad.

18 24. When a new ad is posted, it is automatically placed at the top of the selected
19 category list in the chosen geographic area. Existing ads move progressively lower in the list as
20 new ads are posted at the top.

21 25. This prioritization was implemented by craigslist as a simple method to achieve
22 fair and efficient service to both buyers and sellers using craigslist. Every seller's ad receives
23 initial positioning at the top of its list, and buyers seeking a product or service within a category
24 see the most current ads first.

26. Other than modest fees for ad postings for jobs in certain cities, realty in New York City, and recently ads posted in adult and therapeutic service categories, craigslist provides services to the public free of charge.¹

C. CRAIGSLIST'S TOU

27. craigslist's services and the craigslist website are governed by craigslist's Terms of Use ("TOU"). The TOU are posted on the craigslist website, and users must affirmatively accept the TOU to post ads on craigslist and to create an account on craigslist.

28. The TOU inform users that any use of the craigslist site will use or cause to be used servers located in California.

29. Similarly, the TOU state that the relationship between craigslist and its users will be governed by the laws of the state of California, and that by agreeing to the TOU, users agree to submit to the personal and exclusive jurisdiction of the courts located with the county of San Francisco, CA.

30. The TOU grant users a limited, revocable, nonexclusive license to access the craigslist website and use craigslist's services. The license limits the authorized uses of the website and services, and identifies types of uses that are not authorized.

31. The TOU also set out reasonable estimates of craigslist's damages as liquidated amounts for particular violations of their terms and the craigslist license.

32. At all times relevant, the TOU have, without limitation, prohibited the following activities:

- Repeatedly posting the same or similar content;
- Posting the same or similar content in more than one category;
- Posting the same or similar content in more than one geographic area;
- Posting ads on behalf of others, causing ads to be posted on behalf of others, and accessing craigslist services to facilitate posting ads on behalf of others;

¹ craigslist recently began charging fees for postings in the adult and therapeutic services sections to facilitate identification of persons responsible for illegal and unauthorized posts for potential law enforcement or other identification.

- 1 • Using a Posting Agent (a third-party agent, service, or intermediary that posts
2 content to craigslist on behalf of others) to post ads;
- 3 • Attempting to gain unauthorized access to craigslist's computer systems or
4 engaging in any activity that disrupts, diminishes the quality of, interferes with the
5 performance of, or impairs the functionality of, craigslist's services or the craigslist
6 website;
- 7 • Using any automated device or computer program that enables postings without
8 each posting being entered manually (an "automated posting device"), including,
9 without limitation, the use of any automated posting device to submit postings in
10 bulk;
- 11 • Making available content that uses automated means (*e.g.*, spiders, robots,
12 crawlers, data mining tools, and the like) to download data from craigslist;
- 13 • Sending unsolicited email advertisements to craigslist email addresses or through
14 craigslist computer systems;
- 15 • Any collection, aggregation, copying, duplication, display or derivative use of the
16 service without the express permission of craigslist.

17 33. The TOU are attached to the Complaint as Exhibit A and are incorporated into the
18 Complaint as if fully set forth herein.

19 **D. POSTING ADS ON CRAIGSLIST**

20 34. To post an ad on craigslist, a user must access the craigslist website and first select
21 the geographic area in which to post his or her ad.

22 35. Upon clicking the selected geographic area option, the user is presented with a
23 webpage specific to that geographic area. From that webpage, a user seeking to post an ad must
24 click a link titled "post to classifieds."

25 36. At the resulting display page, the user chooses the appropriate genre of posting
26 from a list for that geographic area (for example, job offered, housing offered, housing wanted,
27 for sale, item wanted, personal/romance, or community). A highlighted and italicized notice at
28 the top of this webpage reminds users, as stated in the TOU, that "cross-posting to multiple cities
or categories is not allowed."

1 37. After selecting the appropriate genre, the user is presented with a list of categories
2 for ads in that genre in that geographic area (for example, categories under "for sale" ads in
3 Seattle, Washington include, without limitation, auto parts, bicycles, boats, collectibles,
4 electronics, jewelry, musical instruments, and tools), and must select an appropriate category for
5 his or her ad.

6 38. After selecting the appropriate category, the user specifies from a list the nearest
7 location within the geographic area, but a notice at the top of this webpage also alerts the users
8 that "*there is no need to cross-post to more than one area - doing so may get you flagged and/or*
9 *blocked - thanks!*"

10 39. On the subsequent page, the user creates the title, price, description and other
11 details for the ad, and provides an email address for replies to the ad. (craigslist anonymizes the
12 email address when the ad is posted and relays replies to the user's genuine email address.)

13 40. After verifying the content of the ad, the user is required to affirmatively accept
14 craigslist's TOU before the ad is posted.

15 41. If the user chooses to decline the TOU, the ad is not posted.

16 42. If the user accepts the TOU, the user receives a screen display that requires the
17 user to respond to a CAPTCHA challenge (explained below). If the CAPTCHA challenge is
18 successfully completed, an email is sent to the user's email address with links that allow the user
19 to finally post, edit or delete the ad.

20 43. To help users manage their ads, craigslist enables each user to create an account.

21 44. To create a craigslist account, a user must provide a valid email address and
22 affirmatively accept craigslist's TOU.

23 45. Users with a craigslist account can post ads through an abbreviated process using
24 their account.

25 **E. CRAIGSLIST SECURITY MEASURES**

26 46. craigslist employs a number of security measures to protect the craigslist website,
27 the integrity and operation of craigslist's systems and services, and craigslist users.

1 47. One measure is the creation of temporary, anonymous email addresses for replies
2 to ads posted by users.

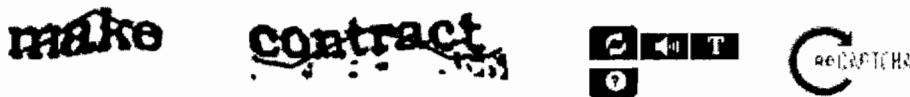
3 48. craigslist assigns a unique craigslist email address, in the form of sale-
4 xxxxxxx@craigslist.org, to each advertisement posted by a user. Emails sent to this craigslist
5 email address are automatically forwarded by craigslist to the user's personal email address
6 (provided when the user posts the ad or creates a craigslist account).

7 49. This system avoids publication of users' personal email addresses, but still allows
8 users to receive replies in their personal email accounts. It protects users' privacy and makes it
9 more difficult for spammers to obtain users' email addresses.

10 50. Another security measure employed by craigslist is the use of a verification
11 program commonly known as CAPTCHA ("Completely Automated Public Turing test to tell
12 Computers and Humans Apart"). CAPTCHA is designed to ensure that a human, not a machine,
13 completes a certain task.

14 51. craigslist uses a CAPTCHA to ensure that ads are posted manually (as required by
15 the TOU) and not by automated means. To post an ad, a user must first timely solve a
16 CAPTCHA.

17 52. When a user creates an account or posts an ad, the user is presented with a
18 webpage displaying a challenge-response test that appears in the form of a box containing
19 partially obscured characters that the user must type into a designated box – this is the
20 CAPTCHA. As shown in the example below, in craigslist's CAPTCHA, the characters of words
21 are obscured so a person can read them, but computer programs, bots and other automated
22 devices usually cannot.



24
25
26 53. If the CAPTCHA is not timely solved, the post or creation of an account on
27 craigslist is not completed.
28

1 54. A further security measure employed by craigslist is telephone verification.

2 55. This measure is designed to prevent repetitious, unauthorized, unlawful and
3 abusive postings on craigslist by requiring users to link a valid telephone number to a registered
4 account in order to post ads in certain instances.

5 56. When telephone verification is mandated, craigslist requires the user to enter a
6 valid telephone number in a specified box on the craigslist website. craigslist then sends a
7 temporary passcode to that telephone number, and the user must enter the temporary password on
8 the craigslist website.

9 57. If the telephone number is not verified, the telephone verified account is not
10 created and the user is unable to post ads in categories that require a telephone verified account.

11 58. craigslist also uses various technological tools to detect and remove ads that have
12 been abusively cross posted in multiple categories or multiple areas, or that are repetitively posted
13 to stay at or near the top of a chosen list or lists.

14 **F. CRAIGSLIST'S COPYRIGHTS**

15 59. craigslist is committed to providing users with an easy-to-understand, easy-to-
16 navigate forum to post and locate ads in local communities. To that end, the craigslist website
17 provides uncluttered interfaces and displays for user input, searches, and results.

18 60. craigslist's website is, by design, uniquely distinctive in its clarity, composition,
19 and simplicity. Among the significant unique elements of the craigslist's website are the clear and
20 simple craigslist account registration and log in features, and the clear and simple post to
21 classified features.

22 61. The website embodies craigslist's mission to provide local online marketplace
23 communities that are predominantly free, friendly, and easy to use. The simplicity and clarity of
24 the craigslist website are fundamental to craigslist's reputation and garner substantial and valuable
25 goodwill with users.

26 62. As an online venture, the intellectual property related to the craigslist website is a
27 vital asset to craigslist.

28 63. craigslist's website is a work of authorship protected by copyright law.

64. craigslist owns all right, title, and interest, including copyrights, in and to its website, including, but not limited to, the post to classifieds, account registration, and account log in expressions and compilations.

65. The craigslist website displays copyright notices.

66. craigslist has registered copyrights in its website, including, but not limited to, the post to classifieds, account registration, and account log-in features of the website. These registrations include:

| Reg. No. | Reg. Date | Title |
|--------------|--------------------|-------------------------------|
| TX0006866660 | September 19, 2008 | Accounts.craigslist.org 2004. |
| TX0006866658 | September 19, 2008 | Accounts.craigslist.org 2008. |
| TX0006866657 | September 19, 2008 | Craigslist website 2006. |
| TX0006866662 | September 19, 2008 | Post.craigslist.org 2004. |
| TX0006866661 | September 19, 2008 | Post.craigslist.org 2008. |

G. ILLICIT POSTING SOFTWARE AND SERVICES

67. Illicit auto-posting software and services threaten craigslist's simple, fair, and efficient classified ad posting and listing system. Auto-posting software and services enable the repetitious posting of duplicative ads within a category on craigslist to keep the ad at or near the top of the category list. They also enable postings in multiple categories on craigslist and in multiple geographic areas.

68. Auto-posting software and services load craigslist's classified ad services with hundreds or thousands, or even millions of illegitimate ads that are redundant, miscategorized and/or mislocated.

69. Repetitious posting of an ad, posting an ad in multiple categories, and posting an ad in more than one geographic area are all prohibited by the craigslist TOU. The TOU also expressly prohibit the use of any automated posting devices, including, but not limited to computer programs, that enable posting ads without manually entering each one.

1 70. Auto-posting disrupts craigslist's services by clogging craigslist categories with
2 numerous advertisements for the same products or services or ads for irrelevant products or
3 services. Auto-posting activities degrade craigslist user experiences and cause harm to
4 craigslist's reputation as a fast, efficient, and fair platform for sellers to advertise and buyers to
5 locate local items and services.

6 71. For example, auto-posting impairs the efficiency and ease-of-use of craigslist
7 services for legitimate users by causing category lists to display illegitimate, irrelevant, non-local,
8 and/or duplicative ads that users are forced to sift through to find legitimate non-redundant ads.
9 Ads that are repeatedly auto posted also inequitably displace new ads legitimately placed at the
10 top of a category list. Additionally, auto-posting ads in multiple categories or multiple
11 geographic areas subverts users' expectations that they will find only ads regarding particular
12 products or services within a certain category and that they will find only ads for *local* products or
13 services within a given geographic area.

14 72. Auto-posting imposes heavy burdens on craigslist's computer systems and
15 personnel. It creates heightened demands on craigslist's computers and systems, and causes
16 craigslist to expend time and resources and to incur additional costs in order to continue to
17 provide its users with reliable, efficient service despite the high volumes of illegitimate ads. But
18 for craigslist's continuous efforts and expenditures to thwart auto-posting and its impacts, auto-
19 posting would overwhelm craigslist's computers and systems, effectively eliminate legitimate ads
20 from the site and degrade the user experience for legitimate users by increasing craigslist's
21 response time to legitimate users' requests, decreasing craigslist's performance and ability to
22 process the increased volume of ads, and frustrating legitimate users resulting in large numbers of
23 users abandoning craigslist.

24 73. To continue to profit from their sale of unauthorized, unlawful auto-posting
25 software and services despite craigslist's effort to bar them, Defendants intentionally circumvent
26 technological security measures implemented by craigslist to stop auto-posting, including
27 CAPTACHAs, telephone verification and posting limits per individual account, email address,
28 and IP address. Indeed, whenever craigslist implements a new protective measure, Defendants

1 are deterred only as long as it takes them to devise an illegitimate means of circumventing the
2 new measure.

3 **H. DEFENDANTS' AUTO-POSTING SOFTWARE AND SERVICES**

4 74. Defendants develop, offer, market and sell auto-posting and related software and
5 services in violation of craigslist's TOU through their interactive websites, www.cladgenius.com,
6 www.caposter.net, and www.pvagenius.com. They sell computer software, entitled "CLAD
7 Genius," and other automated devices and related services that enable the automated posting of
8 ads on craigslist (i.e., posting without each ad being entered manually), including circumventing
9 craigslist security measures to do so.

10 75. Defendants advertise their "CLAD Genius" product as "Auto Posting the Smart
11 and Easy Way." They tout that "[w]hether you are posting on Craigslist.org, Backpage.com,
12 Kijiji.com or all these sites combined there is a smarter and faster way to get your classified
13 postings online and fully automated. Your solution is here and the tool is called CLAD Genius,
14 short for Classified Advertising Genius, the only software for online marketing with a built in
15 brain to fully manage and enhance your online posting campaigns."

16 76. Defendants advertise that "CLAD Genius" allows users to "Create Accounts
17 Now." They state that "with one piece of software you can post ads online, along with create
18 Gmail, Hotmail, and Craigslist accounts. All in a few simple clicks for easy marketing, only with
19 CLAD Genius."

20 77. Defendants tout that "CLAD Genius" includes the "Easy Ad Maker" feature,
21 which allows customers to "[b]enefit with [sic] 'mutations' by creating your ad once and having
22 CLAD Genius create unique versions for infinite posting abilities, helping you stay clear of
23 ghosting and flagging."

24 78. Defendants advertise that "CLAD Genius" includes the "Craigslist CAPTCHA
25 Entry" feature that allows users to bypass the craigslist CAPTCHA security measure. Defendants
26 state that "we have the answer with our auto CAPTCHA for Backpage and manual entry service
27 for Craigslist, quick and easy."
28

1 79. Defendants "CLAD Genius" also includes the PVA Creator feature that creates
2 craigslist phone verified accounts. Defendants advertise that "[n]ever before has there been auto
3 posting software that creates Craigslist Phone Verified Accounts, until now! CLAD Genius is the
4 only product available on the market with this advance feature that actually makes your PVA's for
5 you. Now you don't have to make them manually. You can create as many as you need with one
6 tool for all your campaigns and take the worry out of posting."

7 80. Defendants' "CLAD Genius" also includes the Proxy Finder and IP Rotator
8 features that provide "full support for all types of internet proxies . . . for staying under the radar
9 when doing mass posting. You can enter your own list of private proxies, public proxies, or even
10 let the built in proxy drone pick for you." Defendants state that "we know the hassle of having
11 your IP's blocked when trying to run a [sic] ad campaign and how having a solid list of proxies
12 makes posting even easier. That's why we built into CLAD Genius the auto proxy finder that
13 runs every time you do your posting and finds working public IP's to run inside software to get
14 your ads up successfully with no extra effort involved."

15 81. Defendants charge customers \$899.95 for a copy of their CLAD Genius: PRO
16 software and \$499.95 for a copy of their CLAD Genius: LITE software, which includes all of the
17 features mentioned above except the PVA Creator.

18 82. Defendants advertise on www.pvagenius.com that "PVA Genius is a provider for
19 unlimited Craigslist phone verified accounts. All phone verified accounts created can be
20 effortlessly used with auto posting software CLAD Genius. Also it can either be integrated into
21 other 3rd party software applications or used to post on Craigslist manually." Defendants explain
22 that "[w]ith billions of users visiting the site on a monthly basis, you practically have the entire
23 world as your audience if you post ads through this site – which is why it is extremely important
24 to have Craigslist phone verified accounts ready and allow you to post in any area of their website
25 with no restrictions."

26 83. Defendants charge customers \$2.95 per phone verified account.
27
28

1 84. Defendants, operating commercial and interactive websites available to residents
2 of all states, sell their products and services through their websites to customers in many states,
3 including California residents.

4 85. Defendants' CLAD Genius includes numerous features primarily designed or
5 produced for the purpose of circumventing craigslist's technological security measures that
6 effectively control access to portions of its copyright-protected website; have only limited
7 commercially significant purposes or uses other than to circumvent craigslist's technological
8 security measures; and are marketed by Defendants or others acting in concert with Defendants
9 for use in circumventing craigslist's technological security measures.

10 86. Defendants' CLAD Genius includes features primarily designed or produced for
11 the purpose of circumventing protection afforded by craigslist's technological security measures
12 that effectively protect craigslist's copyrights; have only limited commercially significant
13 purposes or uses other than to circumvent protection afforded by craigslist's technological
14 security measures; and are marketed by Defendants or others acting in concert with Defendants
15 for use in circumventing protection afforded by craigslist's technological security measures.

16 87. On information and belief, Defendants have repeatedly and systematically posted
17 thousands of ads on craigslist using autoposting software and continue to post thousands of ads
18 using autoposting software, including posting duplicative ads multiple times, in multiple
19 categories and multiple geographic areas.

20 88. On information and belief, Defendants accessed and copied the craigslist website
21 (including, but not limited to, creating cached copies of the website) to develop, test, implement,
22 use, and provide their CLAD Genius software, and other auto-posting software, programs,
23 devices, and services.

24 89. These acts of access and copying were and are unauthorized or in excess of
25 authorization for access to and use of the craigslist website, services, computers, and systems.

26 90. On information and belief, Defendants continue to access and copy the craigslist
27 website (including, but not limited to, creating cached copies of the website) to operate, maintain,
28 and update their auto-posting software, programs, devices, and services.

1 91. These acts of access and copying were and are unauthorized or in excess of
2 authorization for access to and use of the craigslist website, services, computers, and systems.

3 92. On information and belief, Defendants were required to affirmatively agree to and
4 accept, and did affirmatively agree to and accept, craigslist's TOU at one or more times when
5 they accessed the craigslist website and services.

6 93. On information and belief, each time Defendants affirmatively accepted and
7 agreed to abide by craigslist's TOU, Defendants intended to violate the TOU and concealed their
8 intent to violate the TOU from craigslist.

9 94. Defendants continued to sell and support their auto-posting software after
10 receiving craigslist's Cease and Desist Letter. On August 10, 2009, craigslist sent Defendants a
11 Cease and Desist Letter via the electronic submission system available on the cladgius.com
12 website. Defendants never responded to craigslist's letter and continued to market, develop, and
13 sell their products and services.

14 95. Defendants' actions are knowing, intentional, willful, malicious, and fraudulent.

15 96. Defendants' CLAD Genius features, including but not limited to the Craigslist
16 CAPTCHA Entry, PVA Creator, IP Rotator, Proxy Finder, and Proxy Spider features, are
17 primarily designed or produced for the purpose of circumventing craigslist's technological
18 security measures that effectively control access to portions of its copyright-protected website;
19 have only limited commercially significant purposes or uses other than to circumvent craigslist's
20 technological security measures; and are marketed by Defendants or others acting in concert with
21 Defendants for use in circumventing craigslist's technological security measures.

22 97. Defendants' CLAD Genius features, including but not limited to the Craigslist
23 CAPTCHA Entry, PVA Creator, IP Rotator, Proxy Finder, and Proxy Spider features, are
24 primarily designed or produced for the purpose of circumventing protection afforded by
25 craigslist's technological security measures that effectively protect craigslist's copyrights; have
26 only limited commercially significant purposes or uses other than to circumvent protection
27 afforded by craigslist's technological security measures; and are marketed by Defendants or
28

1 others acting in concert with Defendants for use in circumventing protection afforded by
2 craigslist's technological security measures.

3 98. On information and belief, Defendants do not disclose to their customers that their
4 services are unlawful and violate the craigslist TOU.

5 99. Defendants also knowingly, willfully, intentionally, fraudulently and maliciously
6 induce, encourage and assist craigslist users to abuse craigslist systems and services and violate
7 the craigslist TOU.

8 **I. CRAIGSLIST'S INJURIES**

9 100. Defendants' actions and activities burden, interfere with and harm craigslist's
10 systems, services, and resources; burden, interfere with and harm the use of craigslist by
11 legitimate users; burden, interfere with and harm craigslist's relationship, reputation and goodwill
12 with legitimate users; and violate numerous provisions of the TOU.

13 101. Defendants have caused craigslist to incur substantial costs to investigate,
14 remediate, prevent, and combat Defendants' auto-posting software, programs, devices, and
15 services and Defendants' unauthorized access to and use of craigslist's systems and services, and
16 to investigate, remediate, and prevent harm to craigslist's computer systems and services caused
17 by the Defendants.

18 102. For example, the increased load and burden on craigslist's servers, and the burden
19 on craigslist's personnel resources to develop counter measures, investigate incidents, remove
20 unauthorized ads, and address user complaints as a result of auto-posting, cost craigslist well in
21 excess of \$5,000 per year.

22 103. Damages and losses incurred by craigslist include, without limitation, interference
23 with proper and efficient service to legitimate users; requiring craigslist to undertake
24 extraordinary actions to monitor and enhance website infrastructure; and significantly increasing
25 costs of computer hardware, software, bandwidth, co-location fees, troubleshooting, customer
26 service, and systems maintenance.

27 104. Furthermore, the harm to craigslist's relationships, reputation and goodwill with
28 legitimate users is real and irreparable.

105. For example, users have blamed craigslist for interference with the fair and efficient operation of craigslist services caused by illicit auto-posting, and have accused craigslist of conspiring with parties responsible for auto-posting, like Defendants. Users who become frustrated by auto-posting abuses on craigslist may stop using craigslist and never return. Such injuries to craigslist cannot be compensated by monetary damages and are irreparable.

106. The craigslist TOU include a liquidated damages provision to compensate craigslist for harm and injury from certain unauthorized and prohibited activities.

107. Under the TOU' liquidated damages provision, as a result of their violations, Defendants are liable to craigslist for, among other relief and remedies, the following amounts:

- \$1,000 for each post or message that impersonated any person or entity, or falsely stated the affiliation of the sender with another person or entity;
- \$100 for each message posted in excess of limits established by craigslist or each day that craigslist is accessed after craigslist terminates access to or use of the service; and
- \$100 for each item posted by a posting agent.

108. craigslist is entitled to an injunction to stop Defendants' unlawful activities and the irreparable harm they are causing craigslist. craigslist is also entitled to monetary damages, including, but not limited to, liquidated damages, to compensate for the quantifiable harm and injury Defendants have caused and continue to cause craigslist.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

COPYRIGHT INFRINGEMENT **(DIRECT, VICARIOUS AND CONTRIBUTORY)** **17 U.S.C. § 101, ET SEQ.**

109. craigslist realleges and incorporates by reference all of the preceding paragraphs.

110. craigslist owns and has registered copyrights in its website and specific portions thereof.

111. Defendants had and have access to craigslist's website.

112. Defendants have copied and/or created derivative works from craigslist's website and/or portions thereof, and continue to do so.

113. Defendants' copies and/or derivative works are substantially similar to craigslist's original copyright-protected website.

114. The copies and/or derivative works created by Defendants are unauthorized.

115. At all times relevant, Defendants obtained a direct financial benefit from the infringement and had the right and ability to control the infringing conduct, and/or intentionally induced, encouraged, caused or materially contributed to the infringement.

116. The foregoing acts of Defendants constitute direct infringement, vicarious infringement and/or contributory infringement of craigslist's exclusive rights in its copyrighted works under 17 U.S.C. § 106.

117. Upon information and belief, Defendants' actions were and are intentional, willful, wanton and performed in disregard of craigslist's rights.

118. craigslist has been and will continue to be damaged, and Defendants have been unjustly enriched, by Defendants' unlawful infringement of craigslist's copyrighted works in an amount to be proven at trial.

119. Defendants' conduct also has caused irreparable and incalculable harm and injuries to craigslist, and, unless enjoined, will cause further irreparable and incalculable injury, for which craigslist has no adequate remedy at law.

120. craigslist is entitled to the relief provided by 17 U.S.C. §§ 502-505, including, but not limited to, injunctive relief, an order for the impounding and destruction of all Defendants' infringing copies and/or derivative works, compensatory damages (including, but not limited to actual damages and/or Defendants' profits), statutory damages, punitive damages, and craigslist's costs and attorneys' fees in amounts to be determined at trial.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE DIGITAL MILLENNIUM COPYRIGHT ACT ("DMCA")
17 U.S.C. § 1201, *ET SEQ.*

121. craigslist realleges and incorporates by reference all of the preceding paragraphs.

122. craigslist has registered copyrights in its website and specific portions thereof.

123. craigslist employs numerous technological measures, including, but not limited to, identification of recurrent IP addresses, CAPTCHAs, and telephone verification systems, to effectively protect and control access to and use of its copyrighted website and/or portions thereof.

124. Defendants have circumvented and are circumventing technological measures that effectively control access to craigslist's copyrighted website and/or portions thereof.

125. On information and belief, Defendants manufacture, import, provide, offer to the public, or otherwise traffic in technology, products, services, devices, components, or parts thereof, that are primarily designed or produced for the purpose of circumventing technological measures and/or protection afforded by technological measures that effectively control access to craigslist's copyrighted website and/or portions thereof.

126. On information and belief, Defendants' technology, products, services, devices, components, or parts thereof have limited or no commercially significant purpose or use other than to circumvent technological measures that effectively control access to the craigslist website and/or portions thereof.

127. On information and belief, Defendants and/or others acting in concert with Defendants market such technology, products, services, devices, components, or parts thereof with Defendants' knowledge for use in circumventing technological measures that effectively control access to the craigslist website and/or portions thereof.

128. craigslist has been and will continue to be damaged in an amount not presently known with certainty, but which will be proven at trial.

129. Defendants' conduct also has caused irreparable and incalculable harm and injuries to craigslist, and, unless enjoined, will cause further irreparable and incalculable injury, for which craigslist has no adequate remedy at law.

130. craigslist is entitled to the range of relief provided by 17 U.S.C. §§ 1201-1203, including, but not limited to, injunctive relief, compensatory damages or statutory damages, punitive damages, and craigslist's costs and attorneys' fees in amounts to be proven at trial.

THIRD CLAIM FOR RELIEF
VIOLATION OF COMPUTER FRAUD AND ABUSE ACT
18 U.S.C. § 1030

131. craigslist realleges and incorporates by reference all of the preceding paragraphs.

132. craigslist's computers are involved in interstate and foreign commerce and communication, and are protected computers under 18 U.S.C. § 1030(e)(2).

133. On information and belief, Defendants intentionally accessed craigslist's computers without authorization or in excess of authorized access, and through interstate or foreign communication, obtained information from craigslist's computers in violation of the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030(a)(2)(C).

134. On information and belief, Defendants knowingly and with intent to defraud, accessed craigslist's computers without authorization or in excess of authorized access, and thereby furthered the intended fraud and obtained services of value (other than use of the computers) in violation of the CFAA, 18 U.S.C. § 1030(a)(4).

135. On information and belief, Defendants intentionally accessed craigslist's computers without authorization and caused and/or recklessly caused damage in violation of the CFAA, 18 U.S.C. § 1030(a)(5)(A)(ii) and (iii).

136. Defendants' actions have caused loss to one or more persons, including, but not limited to, craigslist, in a one year period aggregating at least \$5,000 in value in accordance with the CFAA, 18 U.S.C. § 1030(a)(5)(B)(i).

137. Defendants' conduct has also caused irreparable and incalculable harm and injuries to craigslist, and, unless enjoined, will cause further irreparable and incalculable injury, for which craigslist has no adequate remedy at law.

138. Under the CFAA, 18 U.S.C. § 1030(g), craigslist is entitled to injunctive relief, compensatory damages, and other equitable relief.

FOURTH CLAIM FOR RELIEF
VIOLATION OF CAL. PEN. CODE § 502

139. craigslist realleges and incorporates by reference all of the preceding paragraphs.

140. craigslist is the owner or lessee of the computers, computer systems, computer network, computer programs, and data that operate the craigslist website and services.

1 141. Defendants have knowingly accessed and without permission used craigslist data,
2 computers, computer systems and/or computer network in order to devise and/or execute a scheme
3 to defraud and deceive in violation of California Penal Code § 502(c)(1).

4 142. Defendants have knowingly accessed and without permission taken, copied, and/or
5 made use of data from craigslist computers, computer systems and/or computer network in
6 violation of California Penal Code § 502(c)(2).

7 143. Defendants have knowingly and without permission used or caused to be used
8 craigslist's computer services in violation of California Penal Code § 502(c)(3).

9 144. Defendants have knowingly and without permission accessed and added data to
10 craigslist computers, computer systems and/or computer network in violation of California Penal
11 Code § 502(c)(4).

12 145. Defendants have knowingly and without permission disrupted or caused the
13 disruption of craigslist's computer services and/or have knowingly and without permission denied
14 or caused the denial of computer services to authorized users of craigslist's computers, computer
15 services and/or computer network in violation of California Penal Code § 502(c)(5).

16 146. Defendants have knowingly and without permission provided or assisted in
17 providing a means of accessing craigslist computers, computer systems, and/or computer network
18 in violation of California Penal Code § 502(c)(6).

19 147. Defendants have knowingly and without permission accessed or caused to be
20 accessed craigslist computers, computer systems, and/or computer network in violation of
21 California Penal Code § 502(c)(7).

22 148. craigslist has suffered and continues to suffer damage as a result of Defendants'
23 violations of the California Penal Code § 502 identified above.

24 149. Defendants' conduct also has caused irreparable and incalculable harm and injuries
25 to craigslist (including, but not limited to, craigslist's reputation and goodwill), and, unless
26 enjoined, will cause further irreparable and incalculable injury, for which craigslist has no
27 adequate remedy at law.
28

150. Defendants willfully violated California Penal Code § 502 in disregard and derogation of craigslist's rights and the rights of legitimate craigslist users, and their actions as alleged above were carried out with oppression, fraud and malice.

151. Pursuant to California Penal Code § 502(e), craigslist is entitled to injunctive relief, compensatory damages, punitive or exemplary damages, attorneys' fees, costs and other equitable relief.

FIFTH CLAIM FOR RELIEF
BREACH OF CONTRACT

152. craigslist realleges and incorporates by reference all of the preceding paragraphs.

153. Use of the craigslist website and use of craigslist services are governed by and subject to the TOU.

154. At all relevant times, the main craigslist homepage and the homepage for each geographic region have provided links to the TOU.

155. In addition, users are presented with the TOU and must affirmatively accept the TOU to register for a craigslist account to post ads.

156. In addition, users are presented with the TOU and must affirmatively accept the TOU before they can post an ad without an account.

157. On information and belief, Defendants affirmatively accepted and agreed to the TOU.

158. On information and belief, Defendants have repeatedly accessed and used craigslist's website and services, and thereby accepted the TOU.

159. On information and belief, Defendants affirmatively accepted the TOU by clicking the "ACCEPT the terms of use" option (not the "DECLINE the terms of use" option) when they set up accounts on craigslist.

160. On information and belief, Defendants affirmatively accepted the TOU by clicking the "ACCEPT the terms of use" option (not the "DECLINE the terms of use" option) when they posted ads on craigslist.

161. The TOU are binding on Defendants.

1 162. Defendants' actions, as described above, have willfully, repeatedly and
2 systematically breached the TOU.

3 163. craigslist has performed all conditions, covenants, and promises required of it in
4 accordance with the TOU.

5 164. Defendants' conduct has damaged craigslist, and caused and continues to cause
6 irreparable and incalculable harm and injury to craigslist.

7 165. craigslist is entitled to injunctive relief, compensatory damages, liquidated
8 damages under the TOU, attorneys' fees, costs and/or other equitable relief.

9
10 **SIXTH CLAIM FOR RELIEF**
INDUCING BREACH OF CONTRACT

11 166. craigslist realleges and incorporates by reference all of the preceding paragraphs.

12 167. craigslist's TOU constitute a valid and existing contract between craigslist and
13 craigslist users.

14 168. Defendants had knowledge of the TOU and of the valid and existing contract
15 between craigslist and craigslist users created by the TOU.

16 169. Defendants intended to induce users to breach their contract with craigslist.

17 170. Users who were induced to utilize Defendants' products and services did in fact
18 breach the TOU by acts, including, but not limited to:

- 19
- 20 • Repeatedly posting the same or similar content;
 - 21 • Posting the same item or service in more than one category;
 - 22 • Posting the same item or service in more than one geographic area;
 - 23 • Gaining unauthorized access to craigslist's computer systems; and
 - 24 • Using "automated posting devices" to post to craigslist.
- 25

26 171. These breaches of the TOU were caused by Defendants' unjustified and wrongful
27 conduct.

172. Defendants' conduct has damaged craigslist, and caused and continues to cause irreparable and incalculable harm and injury to craigslist.

173. craigslist is entitled to injunctive relief, compensatory damages, liquidated damages under the TOU, attorneys' fees, costs and/or other equitable relief.

174. craigslist is informed and believes that Defendants' conduct was undertaken with the intent to injure craigslist, or with a willful and conscious disregard of craigslist's rights, and constitutes clear and convincing evidence of oppression, fraud and malice under California Civil Code § 3294. As a result, craigslist is entitled to an award of punitive damages against Defendants in an amount sufficient to deter them from future misconduct.

SEVENTH CLAIM FOR RELIEF
INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

175. craigslist realleges and incorporates by reference all of the preceding paragraphs.

176. craigslist's TOU constitute a valid and existing contract between craigslist and craigslist users.

177. Defendants had knowledge of the TOU and of the valid and existing contract between craigslist and craigslist users created by the TOU.

178. Defendants committed intentional and unjustified acts designed to interfere with or disrupt the contract between craigslist and craigslist users.

179. Defendants caused actual interference with or disruption of relationships between craigslist and craigslist users.

180. Defendants' conduct has damaged craigslist, and caused and continues to cause irreparable and incalculable harm and injury to craigslist.

181. craigslist is entitled to injunctive relief, compensatory damages, liquidated damages under the TOU, attorneys' fees, costs and/or other equitable relief.

182. craigslist is informed and believes that Defendants' conduct was undertaken with the intent to injure craigslist, or with a willful and conscious disregard for craigslist's rights, and constitutes clear and convincing evidence of oppression, fraud and malice under California Civil

Code § 3294. As a result, craigslist is entitled to an award of punitive damages against Defendants in an amount sufficient to deter them from future misconduct.

EIGHTH CLAIM FOR RELIEF
FRAUD

183. craigslist alleges and incorporates by reference all of the preceding paragraphs.

184. On information and belief, Defendants have repeatedly accessed and used craigslist's website and services, including, but not limited to, the post to classified, account registration and account log in portions and services of the website, and, in doing so, represented to craigslist that they would comply with the TOU, and thus that they would not, among other things, use automated devices, post duplicative ads, post ads in multiple categories or multiple geographic areas, or otherwise abuse or interfere with the website or services.

185. On information and belief, Defendants affirmatively accepted the TOU by clicking the "ACCEPT the terms of use" option (not the "DECLINE the terms of use" option) when they set up accounts on craigslist, and thereby expressly represented to craigslist that they would comply with the TOU, and thus that they would not, among other things, use automated devices, post duplicative ads, post ads in multiple categories or multiple geographic areas, or otherwise abuse or interfere with the website or services.

186. On information and belief, Defendants affirmatively accepted the TOU by clicking the "ACCEPT the terms of use" option (not the "DECLINE the terms of use" option) when they posted ads on craigslist, and thereby expressly represented to craigslist that they would comply with the TOU, and thus that they would not, among other things, use automated devices, post duplicative ads, post ads in multiple categories or multiple geographic areas, or otherwise abuse or interfere with the website or services.

187. craigslist reasonably relied on Defendants' representations to provide Defendants with access to portions of the craigslist website and access to certain services offered on the craigslist website.

188. Defendants' representations that they would comply with the TOU were false.

189. Defendants have accessed and used the craigslist website and services, and, when they accepted the TOU, they intended to, and did, access and use the craigslist website and services, in violation of the TOU as described above.

190. On information and belief, when Defendants accepted the TOU and accessed and used craigslist's website and services, they concealed from craigslist their true intent to violate the TOU.

191. As a result of Defendants' fraudulent representations and omissions, Defendants obtained information about the structure and operating features of craigslist's website and services to enable them to design, test and operate their auto-posting software and services and related devices.

192. Defendants' conduct has damaged craigslist, and caused and continues to cause irreparable and incalculable harm and injury to craigslist.

193. craigslist is entitled to injunctive relief, compensatory damages, liquidated damages under the TOU, attorneys' fees, costs and/or other equitable relief.

194. craigslist is informed and believes that Defendants' conduct was undertaken with the intent to injure craigslist, or with a willful and conscious disregard for craigslist's rights, and constitutes clear and convincing evidence of oppression, fraud and malice under California Civil Code § 3294. As a result, craigslist is entitled to an award of punitive damages against Defendants in an amount sufficient to deter them from future misconduct.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiff craigslist, Inc. prays for the following relief:

1. A preliminary injunction and permanent injunction enjoining and restraining all Defendants, their employees, representatives, agents, and all persons or entities acting in concert with them during the pendency of this action and thereafter perpetually from:

(a) Manufacturing, developing, creating, adapting, modifying, exchanging, offering, distributing, selling, providing, importing, trafficking in, or using any automated device or computer program (including, but not limited to, any technology, product, service, device,

1 component, or part thereof) that enables postings on craigslist without each posting being entered
2 manually;

3 (b) Manufacturing, developing, creating, adapting, modifying, exchanging,
4 offering, distributing, selling, providing, importing, making available, trafficking in, or using
5 content that uses automated means (including, but not limited to, spiders, robots, crawlers, data
6 mining tools, and data scraping tools) to download or otherwise obtain data from craigslist;

7 (c) Engaging in any activity that disrupts, diminishes the quality of, interferes
8 with the performance of, or impairs the functionality of, craigslist's services or the craigslist
9 website;

10 (d) Copying, distributing, displaying, creating derivative works or otherwise
11 using protected elements of craigslist's copyrighted website (located at www.craigslist.org),
12 including, but not limited to, the website's post to classifieds, account registration and account log
13 in expressions and compilations, and from inducing, encouraging, causing or materially
14 contributing to any other person or entity doing the same;

15 (e) Circumventing technological measures that control access to craigslist's
16 copyrighted website and/or portions thereof (including, but not limited to, CAPTCHAs and RE-
17 CAPTCHAs), and from inducing, encouraging, causing or materially contributing to any other
18 person or entity doing the same;

19 (f) Manufacturing, developing, creating, adapting, modifying, exchanging,
20 offering, selling, distributing, providing, creating, importing, trafficking in, or using technology,
21 products, services, devices, components, or parts thereof, that are primarily designed or produced
22 for the purpose of circumventing technological measures and/or protection afforded by
23 technological measures that control access to craigslist's copyrighted website and/or portions
24 thereof, and from inducing, encouraging, causing or materially contributing to any other person or
25 entity doing the same;

26 (g) Accessing or attempting to access craigslist's computers, computer
27 systems, computer network, computer programs, and data, without authorization or in excess of
28 authorized access, including, but not limited to, creating accounts or posting content on the

1 craigslist website, and from inducing, encouraging, causing, materially contributing to, aiding or
2 abetting any other person or entity to do the same;

3 (h) Manufacturing, developing, creating, adapting, modifying, exchanging,
4 offering, selling, distributing, providing, importing, trafficking in, purchasing, acquiring,
5 transferring, marketing or using any program, device, or service designed to provide an
6 automated means of accessing craigslist's website, automated means of creating craigslist
7 accounts, or automated means of posting ads or other content on the craigslist's website,
8 including, but not limited to, any program, device, or service that is, in whole or in part, designed
9 to circumvent security measures on the craigslist website;

10 (i) Repeatedly posting the same or similar content on craigslist, posting the
11 same item or service in more than one category on craigslist, posting the same item or service in
12 more than one geographic area on craigslist, and from inducing, encouraging, causing, assisting,
13 aiding, abetting or contributing to any other person or entity doing the same;

14 (j) Posting ads on behalf of others, causing ads to be posted on behalf of
15 others, and accessing craigslist to facilitate posting ads on behalf of others;

16 (k) Using, offering, selling or otherwise providing a third-party agent, service,
17 or intermediary to post content to craigslist;

18 (l) Misusing or abusing craigslist, the craigslist website and craigslist services
19 in any way, including, but not limited to, violating the craigslist TOU; and

20 (m) Accessing or using craigslist's website for any commercial purpose
21 whatsoever.

22 2. An order requiring Defendants to account for, hold in constructive trust, pay over
23 to craigslist, and otherwise disgorge all profits derived by Defendants from their unlawful
24 conduct and unjust enrichment as permitted by law;

25 3. An award to craigslist of damages, including, but not limited to, liquidated,
26 compensatory, statutory, and punitive damages, as permitted by law;

27 4. For an award of prejudgment and post-judgment interest; and
28

1 5. An award to craigslist of its costs of suit, including, but not limited to, reasonable
2 attorneys' fees, as permitted by law;

3 6. For such other relief as the Court deems just and proper.
4

5 DATED: October 5, 2009

PERKINS COIE LLP

6
7 By: 

Brian Hennessey (SBN 226721)

BHennessey@perkinscoie.com

8 Elizabeth L. McDougall (WA Bar No. 27026)

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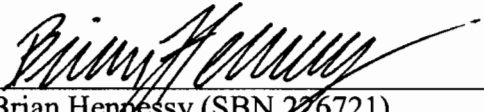
10 Attorneys for Plaintiff
11 craigslist, Inc.
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial of all issues in the above-captioned action which are triable to a jury.

DATED: October 5, 2009

PERKINS COIE LLP

By: 
Brian Hennessy (SBN 226721)
BHennessy@perkinscoie.com
Elizabeth L. McDougall (WA Bar No. 27026)
EMcDougall@perkinscoie.com

Attorneys for Plaintiff
craigslist, Inc.

EXHIBIT A

craigslist > about > terms of use

CRAIGSLIST TERMS OF USE

1. ACCEPTANCE OF TERMS

craigslist provides a collection of online resources, including classified ads, forums, and various email services, (referred to hereafter as "the Service") subject to the following Terms of Use ("TOU"). By using the Service in any way, you are agreeing to comply with the TOU. In addition, when using particular craigslist services, you agree to abide by any applicable posted guidelines for all craigslist services, which may change from time to time. Should you object to any term or condition of the TOU, any guidelines, or any subsequent modifications thereto or become dissatisfied with craigslist in any way, your only recourse is to immediately discontinue use of craigslist. craigslist has the right, but is not obligated, to strictly enforce the TOU through self-help, community moderation, active investigation, litigation and prosecution.

2. MODIFICATIONS TO THIS AGREEMENT

We reserve the right, at our sole discretion, to change, modify or otherwise alter these terms and conditions at any time. Such modifications shall become effective immediately upon the posting thereof. You must review this agreement on a regular basis to keep yourself apprised of any changes. You can find the most recent version of the TOU at:

<http://www.craigslist.org/about/terms.of.use.html>

3. CONTENT

You understand that all postings, messages, text, files, images, photos, video, sounds, or other materials ("Content") posted on, transmitted through, or linked from the Service, are the sole responsibility of the person from whom such Content originated. More specifically, you are entirely responsible for each individual item ("Item") of Content that you post, email or otherwise make available via the Service. You understand that craigslist does not control, and is not responsible for Content made available through the Service, and that by using the Service, you may be exposed to Content that is offensive, indecent, inaccurate, misleading, or otherwise objectionable. Furthermore, the craigslist site and Content available through the Service may contain links to other websites, which are completely independent of craigslist. craigslist makes no representation or warranty as to the accuracy, completeness or authenticity of the information contained in any such site. Your linking to any other websites is at your own risk. You agree that you must evaluate, and bear all risks associated with, the use of any Content, that you may not rely on said Content, and that under no circumstances will craigslist be liable in any way for any Content or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed or otherwise made available via the Service. You acknowledge that craigslist does not pre-screen or approve Content, but that craigslist shall have the right (but not the obligation) in its sole discretion to refuse, delete or move any Content that is available via the Service, for violating the letter or spirit of the TOU or for any other reason.

4. THIRD PARTY CONTENT, SITES, AND SERVICES

The craigslist site and Content available through the Service may contain features and functionalities that may link you or provide you with access to third party content which is completely independent of craigslist, including web sites, directories, servers, networks, systems, information and databases, applications, software, programs, products or services, and the Internet as a whole.

Your interactions with organizations and/or individuals found on or through the Service, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties.

You agree that craigslist shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings. If there is a dispute between participants on this site, or between users and any third party, you understand and agree that craigslist is under no obligation to become involved. In the event that you have a dispute with one or more other users, you hereby release craigslist, its officers, employees, agents and successors in rights from claims, demands and damages (actual and consequential) of every kind or nature, known or unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to such disputes and / or our service. If you are a California resident, you waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

5. NOTIFICATION OF CLAIMS OF INFRINGEMENT

If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please notify craigslist's agent for notice of claims of copyright or other intellectual property infringement ("Agent"), at

abuse@craigslist.org

or:

Copyright Agent
craigslist
1381 9th Avenue
San Francisco, CA
94122

Please provide our Agent with the following Notice:

- a) Identify the material on the craigslist site that you claim is infringing, with enough detail so that we may locate it on the website;
- b) A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- c) A statement by you declaring under penalty of perjury that (1) the above information in your Notice is accurate, and (2) that you are the owner of

the copyright interest involved or that you are authorized to act on behalf of that owner;

d) Your address, telephone number, and email address; and

e) Your physical or electronic signature.

craigslist will remove the infringing posting(s), subject to the the procedures outlined in the Digital Millenium Copyright Act (DMCA).

6. PRIVACY AND INFORMATION DISCLOSURE

craigslist has established a Privacy Policy to explain to users how their information is collected and used, which is located at the following web address:

http://www.craigslist.org/about/privacy_policy

Your use of the craigslist website or the Service signifies acknowledgement of and agreement to our Privacy Policy. You further acknowledge and agree that craigslist may, in its sole discretion, preserve or disclose your Content, as well as your information, such as email addresses, IP addresses, timestamps, and other user information, if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: comply with legal process; enforce the TOU; respond to claims that any Content violates the rights of third-parties; respond to claims that contact information (e.g. phone number, street address) of a third-party has been posted or transmitted without their consent or as a form of harassment; protect the rights, property, or personal safety of craigslist, its users or the general public.

7. CONDUCT

You agree not to post, email, or otherwise make available Content:

a) that is unlawful, harmful, threatening, abusive, harassing, defamatory, libelous, invasive of another's privacy, or is harmful to minors in any way;

b) that is pornographic or depicts a human being engaged in actual sexual conduct including but not limited to (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or (ii) bestiality, or (iii) masturbation, or (iv) sadistic or masochistic abuse, or (v) lascivious exhibition of the genitals or pubic area of any person;

c) that harasses, degrades, intimidates or is hateful toward an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;

d) that violates the Fair Housing Act by stating, in any notice or ad for the sale or rental of any dwelling, a discriminatory preference based on race, color, national origin, religion, sex, familial status or handicap (or violates any state or local law prohibiting discrimination on the basis of these or other characteristics);

e) that violates federal, state, or local equal employment opportunity laws, including but not limited to, stating in any advertisement for employment a preference or requirement based on race, color, religion,

sex, national origin, age, or disability.

f) with respect to employers that employ four or more employees, that violates the anti-discrimination provision of the Immigration and Nationality Act, including requiring U.S. citizenship or lawful permanent residency (green card status) as a condition for employment, unless otherwise required in order to comply with law, regulation, executive order, or federal, state, or local government contract.

g) that impersonates any person or entity, including, but not limited to, a craigslist employee, or falsely states or otherwise misrepresents your affiliation with a person or entity (this provision does not apply to Content that constitutes lawful non-deceptive parody of public figures.);

h) that includes personal or identifying information about another person without that person's explicit consent;

i) that is false, deceptive, misleading, deceitful, misinformative, or constitutes "bait and switch";

j) that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party, or Content that you do not have a right to make available under any law or under contractual or fiduciary relationships;

k) that constitutes or contains "affiliate marketing," "link referral code," "junk mail," "spam," "chain letters," "pyramid schemes," or unsolicited commercial advertisement;

l) that constitutes or contains any form of advertising or solicitation if: posted in areas of the craigslist sites which are not designated for such purposes; or emailed to craigslist users who have not indicated in writing that it is ok to contact them about other services, products or commercial interests

m) that includes links to commercial services or web sites, except as allowed in "services";

n) that advertises any illegal service or the sale of any items the sale of which is prohibited or restricted by any applicable law, including without limitation items the sale of which is prohibited or regulated by California law. A partial list of prohibited items for sale and prohibited services offered is provided at the following web address for your convenience:

<http://craigslist.org/about/prohibited.items.html>

o) that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

p) that disrupts the normal flow of dialogue with an excessive amount of Content (flooding attack) to the Service, or that otherwise negatively affects other users' ability to use the Service; or

q) that employs misleading email addresses, or forged headers or otherwise manipulated identifiers in order to disguise the origin of Content transmitted through the Service.

Additionally, you agree not to:

r) contact anyone who has asked not to be contacted, or make unsolicited contact with anyone for any commercial purpose;

- s) "stalk" or otherwise harass anyone;
- t) collect personal data about other users for commercial or unlawful purposes;
- u) use automated means, including spiders, robots, crawlers, data mining tools, or the like to download data from the Service - unless expressly permitted by craigslist;
- v) post non-local or otherwise irrelevant Content, repeatedly post the same or similar Content or otherwise impose an unreasonable or disproportionately large load on our infrastructure;
- w) post the same item or service in more than one classified category or forum, or in more than one metropolitan area;
- x) attempt to gain unauthorized access to craigslist's computer systems or engage in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of, the Service or the craigslist website; or
- y) use any form of automated device or computer program that enables the submission of postings on craigslist without each posting being manually entered by the author thereof (an "automated posting device"), including without limitation, the use of any such automated posting device to submit postings in bulk, or for automatic submission of postings at regular intervals.
- z) use any form of automated device or computer program ("flagging tool") that enables the use of craigslist's "flagging system" or other community moderation systems without each flag being manually entered by the person that initiates the flag (an "automated flagging device"), or use the flagging tool to remove posts of competitors, or to remove posts without a good faith belief that the post being flagged violates these TOU;

8. POSTING AGENTS

A "Posting Agent" is a third-party agent, service, or intermediary that offers to post Content to the Service on behalf of others. To moderate demands on craigslist's resources, you may not use a Posting Agent to post Content to the Service without express permission or license from craigslist. Correspondingly, Posting Agents are not permitted to post Content on behalf of others, to cause Content to be so posted, or otherwise access the Service to facilitate posting Content on behalf of others, except with express permission or license from craigslist.

9. NO SPAM POLICY

You understand and agree that sending unsolicited email advertisements to craigslist email addresses or through craigslist computer systems, which is expressly prohibited by these Terms, will use or cause to be used servers located in California. Any unauthorized use of craigslist computer systems is a violation of these Terms and certain federal and state laws, including without limitation the Computer Fraud and Abuse Act (18 U.S.C. Â§ 1030 et seq.), Section 502 of the California Penal Code and Section 17538.45 of the California Business and Professions Code. Such violations may subject the sender and his or her agents to civil and criminal penalties.

10. PAID POSTINGS

We may charge a fee to post Content in some areas of the Service. The fee is an access fee permitting Content to be posted in a designated area. Each party posting Content to the Service is responsible for said Content and compliance with the TOU. All fees paid will be non-refundable in the event that Content is removed from the Service for violating the TOU.

11. LIMITATIONS ON SERVICE

You acknowledge that craigslist may establish limits concerning use of the Service, including the maximum number of days that Content will be retained by the Service, the maximum number and size of postings, email messages, or other Content that may be transmitted or stored by the Service, and the frequency with which you may access the Service. You agree that craigslist has no responsibility or liability for the deletion or failure to store any Content maintained or transmitted by the Service. You acknowledge that craigslist reserves the right at any time to modify or discontinue the Service (or any part thereof) with or without notice, and that craigslist shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

12. ACCESS TO THE SERVICE

craigslist grants you a limited, revocable, nonexclusive license to access the Service for your own personal use. This license does not include: (a) access to the Service by Posting Agents; or (b) any collection, aggregation, copying, duplication, display or derivative use of the Service nor any use of data mining, robots, spiders, or similar data gathering and extraction tools for any purpose unless expressly permitted by craigslist. A limited exception to (b) is provided to general purpose internet search engines and non-commercial public archives that use such tools to gather information for the sole purpose of displaying hyperlinks to the Service, provided they each do so from a stable IP address or range of IP addresses using an easily identifiable agent and comply with our robots.txt file. "General purpose internet search engine" does not include a website or search engine or other service that specializes in classified listings or in any subset of classifieds listings such as jobs, housing, for sale, services, or personals, or which is in the business of providing classified ad listing services.

craigslist permits you to display on your website, or create a hyperlink on your website to, individual postings on the Service so long as such use is for noncommercial and/or news reporting purposes only (e.g., for use in personal web blogs or personal online media). If the total number of such postings displayed or linked to on your website exceeds one hundred (100) postings, your use will be presumed to be in violation of the TOU, absent express permission granted by craigslist to do so. You may also create a hyperlink to the home page of craigslist sites so long as the link does not portray craigslist, its employees, or its affiliates in a false, misleading, derogatory, or otherwise offensive matter.

craigslist offers various parts of the Service in RSS format so that users can embed individual feeds into a personal website or blog, or view postings through third party software news aggregators. craigslist permits you to display, excerpt from, and link to the RSS feeds on your personal website or personal web blog, provided that (a) your use of the RSS feed is for

personal, non-commercial purposes only, (b) each title is correctly linked back to the original post on the Service and redirects the user to the post when the user clicks on it, (c) you provide, adjacent to the RSS feed, proper attribution to 'craigslist' as the source, (d) your use or display does not suggest that craigslist promotes or endorses any third party causes, ideas, web sites, products or services, (e) you do not redistribute the RSS feed, and (f) your use does not overburden craigslist's systems. craigslist reserves all rights in the content of the RSS feeds and may terminate any RSS feed at any time.

Use of the Service beyond the scope of authorized access granted to you by craigslist immediately terminates said permission or license. In order to collect, aggregate, copy, duplicate, display or make derivative use of the the Service or any Content made available via the Service for other purposes (including commercial purposes) not stated herein, you must first obtain a license from craigslist.

13. TERMINATION OF SERVICE

You agree that craigslist, in its sole discretion, has the right (but not the obligation) to delete or deactivate your account, block your email or IP address, or otherwise terminate your access to or use of the Service (or any part thereof), immediately and without notice, and remove and discard any Content within the Service, for any reason, including, without limitation, if craigslist believes that you have acted inconsistently with the letter or spirit of the TOU. Further, you agree that craigslist shall not be liable to you or any third-party for any termination of your access to the Service. Further, you agree not to attempt to use the Service after said termination. Sections 2, 4, 6 and 10-16 shall survive termination of the TOU.

14. PROPRIETARY RIGHTS

The Service is protected to the maximum extent permitted by copyright laws and international treaties. Content displayed on or through the Service is protected by copyright as a collective work and/or compilation, pursuant to copyrights laws, and international conventions. Any reproduction, modification, creation of derivative works from or redistribution of the site or the collective work, and/or copying or reproducing the sites or any portion thereof to any other server or location for further reproduction or redistribution is prohibited without the express written consent of craigslist. You further agree not to reproduce, duplicate or copy Content from the Service without the express written consent of craigslist, and agree to abide by any and all copyright notices displayed on the Service. You may not decompile or disassemble, reverse engineer or otherwise attempt to discover any source code contained in the Service. Without limiting the foregoing, you agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any aspect of the Service. CRAIGSLIST is a registered mark in the U.S. Patent and Trademark Office.

Although craigslist does not claim ownership of content that its users post, by posting Content to any public area of the Service, you automatically grant, and you represent and warrant that you have the right to grant, to craigslist an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, and distribute said Content and to prepare derivative works of, or incorporate into other works, said Content, and to grant and authorize sublicenses (through multiple tiers) of the foregoing. Furthermore, by posting Content to any public area of the Service,

you automatically grant craigslist all rights necessary to prohibit any subsequent aggregation, display, copying, duplication, reproduction, or exploitation of the Content on the Service by any party for any purpose.

15. DISCLAIMER OF WARRANTIES

YOU AGREE THAT USE OF THE CRAIGSLIST SITE AND THE SERVICE IS ENTIRELY AT YOUR OWN RISK. THE CRAIGSLIST SITE AND THE SERVICE ARE PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND. ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. TO THE FULLEST EXTENT PERMITTED BY LAW, CRAIGSLIST DISCLAIMS ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, ACCURACY, AND PERFORMANCE OF THE CRAIGSLIST SITE AND THE SERVICE. TO THE FULLEST EXTENT PERMITTED BY LAW, CRAIGSLIST DISCLAIMS ANY WARRANTIES FOR OTHER SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE CRAIGSLIST SITE OR THE SITES OR SERVICE, OR ACCESSED THROUGH ANY LINKS ON THE CRAIGSLIST SITE. TO THE FULLEST EXTENT PERMITTED BY LAW, CRAIGSLIST DISCLAIMS ANY WARRANTIES FOR VIRUSES OR OTHER HARMFUL COMPONENTS IN CONNECTION WITH THE CRAIGSLIST SITE OR THE SERVICE. Some jurisdictions do not allow the disclaimer of implied warranties. In such jurisdictions, some of the foregoing disclaimers may not apply to you insofar as they relate to implied warranties.

16. LIMITATIONS OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL CRAIGSLIST BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (EVEN IF CRAIGSLIST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM ANY ASPECT OF YOUR USE OF THE CRAIGSLIST SITE OR THE SERVICE, WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF THE CRAIGSLIST SITE OR THE SERVICE, FROM INABILITY TO USE THE CRAIGSLIST SITE OR THE SERVICE, OR THE INTERRUPTION, SUSPENSION, MODIFICATION, ALTERATION, OR TERMINATION OF THE CRAIGSLIST SITE OR THE SERVICE. SUCH LIMITATION SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF OTHER SERVICES OR PRODUCTS RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE CRAIGSLIST SITE OR THE SERVICE OR ANY LINKS ON THE CRAIGSLIST SITE, AS WELL AS BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE CRAIGSLIST SITE OR THE SERVICE OR ANY LINKS ON THE CRAIGSLIST SITE. THESE LIMITATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. In some jurisdictions, limitations of liability are not permitted. In such jurisdictions, some of the foregoing limitation may not apply to you.

17. INDEMNITY

You agree to indemnify and hold craigslist, its officers, subsidiaries, affiliates, successors, assigns, directors, officers, agents, service providers, suppliers and employees, harmless from any claim or demand, including reasonable attorney fees and court costs, made by any third party due to or arising out of Content you submit, post or make available through the Service, your use of the Service, your violation of the TOU, your breach of any of the representations and warranties herein, or your violation of any rights of another.

18. GENERAL INFORMATION

The TOU constitute the entire agreement between you and craigslist and govern your use of the Service, superceding any prior agreements between you and craigslist. The TOU and the relationship between you and craigslist shall be governed by the laws of the State of California without regard to its conflict of law provisions. You and craigslist agree to submit to the personal and exclusive jurisdiction of the courts located within the county of San Francisco, California. The failure of craigslist to exercise or enforce any right or provision of the TOU shall not constitute a waiver of such right or provision. If any provision of the TOU is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TOU remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the TOU must be filed within one (1) year after such claim or cause of action arose or be forever barred.

19. VIOLATION OF TERMS AND LIQUIDATED DAMAGES

Please report any violations of the TOU, by flagging the posting(s) for review, or by emailing to:

abuse@craigslist.org

Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.

You understand and agree that, because damages are often difficult to quantify, if it becomes necessary for craigslist to pursue legal action to enforce these Terms, you will be liable to pay craigslist the following amounts as liquidated damages, which you accept as reasonable estimates of craigslist's damages for the specified breaches of these Terms:

- a. If you post a message that (1) impersonates any person or entity; (2) falsely states or otherwise misrepresents your affiliation with a person or entity; or (3) that includes personal or identifying information about another person without that person's explicit consent, you agree to pay craigslist one thousand dollars (\$1,000) for each such message. This provision does not apply to Content that constitutes lawful non-deceptive parody of public figures.
- b. If craigslist establishes limits on the frequency with which you may access the Service, or terminates your access to or use of the Service, you agree to pay craigslist one hundred dollars (\$100) for each message posted in excess of such limits or for each day on which you access craigslist in excess of such limits, whichever is higher.
- c. If you send unsolicited email advertisements to craigslist email addresses or through craigslist computer systems, you agree to pay craigslist twenty five dollars (\$25) for each such email.
- d. If you post Content in violation of the TOU, other than as described above, you agree to pay craigslist one hundred dollars (\$100) for each Item of Content posted. In its sole discretion, craigslist may elect to issue a warning before assessing damages.
- e. If you are a Posting Agent that uses the Service in violation of the TOU, in addition to any liquidated damages under clause (d), you agree to

pay craigslist one hundred dollars (\$100) for each and every Item you post in violation of the TOU. A Posting Agent will also be deemed an agent of the party engaging the Posting Agent to access the Service (the "Principal"), and the Principal (by engaging the Posting Agent in violation of the TOU) agrees to pay craigslist an additional one hundred dollars (\$100) for each Item posted by the Posting Agent on behalf of the Principal in violation of the TOU.

f. If you aggregate, display, copy, duplicate, reproduce, or otherwise exploit for any purpose any Content (except for your own Content) in violation of these Terms without craigslist's express written permission, you agree to pay craigslist three thousand dollars (\$3,000) for each day on which you engage in such conduct.

Otherwise, you agree to pay craigslist's actual damages, to the extent such actual damages can be reasonably calculated. Notwithstanding any other provision of these Terms, craigslist retains the right to seek the remedy of specific performance of any term contained in these Terms, or a preliminary or permanent injunction against the breach of any such term or in aid of the exercise of any power granted in these Terms, or any combination thereof.

20. FEEDBACK

We welcome your questions and comments on this document in the craigslist feedback forum:

<http://forums.craigslist.org/?forumID=8>